

ORDERED.

Dated: July 11, 2023



Lori V. Vaughan
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
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In re)	
)	
Ernest Lorenzo Wilson, III and)	Case No. 6:20-bk-03667-LVV
Barbara Yvette Wilson,)	Chapter 7
)	
Debtors.)	
_____)	

**ORDER GRANTING IN PART DEBTOR'S
MOTION FOR SANCTIONS AND CANCELING HEARING**

THIS CASE came before the Court on June 27, 2023 to consider the Motion for Sanctions Against Internal Revenue Service for Discharge Violations ("Motion") (Doc. No. 18) filed by debtor, Ernest Lorenzo Wilson, III ("Debtor"). Counsel for Debtor appeared at the hearing. The Internal Revenue Service ("IRS") has not filed a response to the Motion and did not appear at the hearing. After hearing argument of counsel and for the reasons stated in open Court, the Court granted the Motion in part, directing the IRS turnover Debtor's 2020, 2021 and 2022 tax refunds to the Debtor and reserved ruling on whether sanctions should be imposed against the IRS until a further hearing on August 1, 2023. For the reasons stated below, the Court modifies its initial oral ruling to grant the Motion in part, directing the IRS turnover Debtor's 2020, 2021 and 2022 tax refunds to the Debtor within 20 days from the entry of this order. However, Debtor's request for actual damages as sanctions

against the IRS is denied without prejudice and Debtor's request for punitive damages as sanctions is denied with prejudice. The hearing scheduled for August 1, 2023 is canceled.

On June 29, 2020, Debtor filed for relief under Chapter 7 of the Bankruptcy Code.¹ Debtor listed IRS on his bankruptcy schedules as an unsecured nonpriority creditor owed over \$20,000 for 2015 federal income taxes ("2015 Taxes").² Debtor received a discharge on October 14, 2020 ("Discharge").³ After entry of the Discharge, the IRS retained Debtor's 2020, 2021 and 2022 federal income tax refunds ("Tax Refunds") and applied them toward the amounts owed for the 2015 Taxes.⁴ Because Debtor asserts the 2015 Taxes have been discharged, Debtor filed the Motion seeking turnover of the Tax Refunds totaling \$9,687 and sanctions against the IRS for violating the discharge injunction consisting of actual and punitive damages. The IRS did not oppose the Motion. As a result, the Court finds the IRS violated the discharge injunction by retaining the Tax Refunds to apply toward the 2015 Taxes. The Court now considers whether sanctions may be imposed against the IRS.

The Court may issue an order or judgment of a monetary award against a governmental unit under §§ 105, 362 or 524 of the Bankruptcy Code, provided the award is not for punitive damages. 11 U.S.C. § 106(a)(1),(2),(3). The enforcement of such order or judgment shall be consistent with appropriate nonbankruptcy law applicable to such governmental unit. 11 U.S.C. § 106(a)(4). Under the Internal Revenue Code, a taxpayer may petition the bankruptcy court to recover damages against the United States if in connection with the collection of a tax, any IRS

¹ Doc. No. 1.

² Doc. No. 1, Schedule E/F.

³ Doc. No. 11.

⁴ Doc. No. 18. The IRS applied \$2,070 of the Debtor's 2020 tax refund, \$1,613 of the Debtor's 2021 tax refund and \$6,004 of the Debtor's 2022 tax refund to the amounts owed for 2015 Taxes.

officer or employee willfully violates the automatic stay or discharge injunction. 26 U.S.C. § 7433(e).

The Court, however, may not award damages unless movant exhausts the administrative remedies available to such movant within the IRS. 26 U.S.C. § 7433(d). With respect to discharge injunction violations, a movant has not exhausted the administrative remedies within the IRS unless movant files an administrative claim for damages with the Chief, Local Insolvency Unit for the judicial district in which the bankruptcy case was filed and the IRS has rendered a decision on the administrative claim or six months has passed since the filing of the administrative claim, whichever is earlier. Treas. Reg. §§ 301.7430-1(e), 301.7433-2(d).

Here, Debtor seeks both actual and punitive damages as sanctions against the IRS for violation of the discharge injunction. Debtor, however, has not alleged or established that he exhausted administrative remedies within the IRS for violation of the discharge injunction. No administrative claim was filed with the IRS and to the extent the Motion itself suffices as an administrative claim,⁵ the IRS has not responded to the Motion and six months has not passed since the filing of the Motion.⁶ As a result, the Court lacks jurisdiction to issue actual damages, including attorney's fees and costs at this time. *See In re Lawson*, No. 6:04-bk-10607, 2008 WL 4572389 (Bankr. M.D. Fla. Feb. 27, 2008)(holding bankruptcy court lacked jurisdiction to issue sanctions against the IRS for actual damages for a stay violation until debtor exhausted administrative remedies with IRS). Furthermore, under § 106(a)(3) this Court may not award punitive damages in any event. Accordingly, it is

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⁵ Debtor served the Motion on the IRS at several different addresses including the IRS Chief, Special Procedures, SCSE: CS: Insolvency, Territory 5, 400 W. Bay Street, Suite 35045, STOP 5730-GRP-2, Jacksonville, FL 32202-4437.

⁶ Debtor filed the Motion on May 1, 2023.

1. The Motion (Doc. No. 18) is **GRANTED IN PART**.
2. Within 20 days from the entry of this order, the Internal Revenue Service is directed to turnover Debtor's 2020, 2021 and 2022 federal income tax refunds totaling \$9,687 to the Debtor, Ernest Lorenzo Wilson, III, c/o Debtor's counsel, Camille Sebreth, Law Office of Camille Sebreth, PLLC, 4604 Andrus Avenue Orlando, FL 32804.
3. Debtor's request for actual damages as sanctions against the Internal Revenue Service for violation of the discharge injunction is **DENIED WITHOUT PREJUDICE**.
4. Debtor's request for punitive damages as sanctions against the Internal Revenue Service for violation of the discharge injunction is **DENIED WITH PREJUDICE**.
5. The status conference scheduled for August 1, 2023 is canceled.

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Attorney Camille Sebreth is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a Proof of Service within 3 days of entry of the order.